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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

\* \* \* \* \*

UNITED STATES OF AMERICA

v.

CHRISTOPHER CANTWELL

\* \* \* \* \*

\*

\*

\* 20-cr-06-01-PB

\* September 22, 2020

\* 9:38 a.m.

\*

\*

TRANSCRIPT OF JURY TRIAL  
DAY ONE - MORNING SESSION  
BEFORE THE HONORABLE PAUL J. BARBADORO

APPEARANCES:

For the Government:

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Anna Z. Krasinski, AUSA  
U.S. Attorney's Office

For the Defendant:

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## P R O C E E D I N G S

(IN COURT - NO JURY AND NO COURT PRESENT)

THE CLERK: In the case of the United States of America versus Christopher Cantwell, criminal case number 20-cr-06-01-PB, the government has premarked Exhibits 100 through 700. All exhibits are marked for identification and shall remain marked for ID at this time.

The defendants have premarked Exhibits A through J. All exhibits are marked for identification and shall remain marked for ID at this time.

(IN COURT - NO JURY PRESENT)

THE CLERK: Court is in session and has for consideration the jury trial in United States of America versus Christopher Cantwell, criminal case number 20-cr-6-1-PB.

THE COURT: Good morning. I wanted to talk to you about a couple of matters before we begin.

First, a person presented himself at the door today and asked to enter and not be required to wear a mask. That person claims to have some kind of condition that prevents him from being able to wear a mask. He's unwilling to come in wearing a mask so I can't evaluate his request in person.

I instructed the staff to give that person the option of submitting a written request, and I believe that person has done so, but I'm not going to delay the trial while

1 I wait to evaluate that. Instead, I intend to proceed.

2 And when I get to a break, we'll give the jury a  
3 break, hopefully by that point I'll have a chance to review  
4 that matter with you, hear any views that you have on the  
5 subject and make a ruling on it, but I won't be able to do  
6 that until the first break. So that's the first thing that I  
7 wanted to address with you.

8 The second thing was to follow up on an issue that  
9 we discussed during our video hearing yesterday and that is  
10 the issue that arose during the impanelment process. And I  
11 won't go through and describe in detail what that issue is  
12 because I laid it out for the parties over the video  
13 conference, but essentially it is that we agreed to use a  
14 prescreening procedure for selection of jurors in which the  
15 parties were given an opportunity to review juror  
16 questionnaires, including a non-case specific supplemental  
17 questionnaire that was submitted to jurors, and they were  
18 permitted -- counsel was permitted to meet and confer and  
19 agree on jurors who would be excused for cause. The Court  
20 accepted their agreed excusals, and a number of potential  
21 jurors were excused before the impanelment process began.

22 As I reflected on this and discussed the issue with  
23 colleagues, it became apparent to me that there was a  
24 potential issue with the use of that prescreening process that  
25 arises based on Rule 43 of the Rules of Criminal Procedure.

1           Just to quote to you the relevant part of that  
2 rule, it provides, "Unless this rule, Rule 5, or Rule 10  
3 provides otherwise, the defendant must be present at every  
4 trial stage, including jury impanelment and the return of the  
5 verdict."

6           I explained to the parties that the case law on  
7 this is somewhat less than clear on whether the prescreening  
8 process that we used here is a trial stage that is part of  
9 impanelment at which the defendant would have a right to be  
10 present or not.

11           In light of that uncertainty and because the  
12 parties hadn't raised it with me, I felt it was important to  
13 raise it on my own with the parties.

14           I presented the issue to the parties. I did not  
15 require them to take a position on it immediately. Instead, I  
16 asked the defendants -- defense counsel to meet and confer,  
17 consult with their client, and I made clear to the parties  
18 that I was inclined, if the defendant wanted it, to re-impanel  
19 an entirely new jury with a new jury panel to ensure that any  
20 right the defendant may have to be physically present during  
21 that prescreening process was fulfilled, and I explained how  
22 that would work.

23           I was informed later in the day that the defendant  
24 does -- and I explained further that that impanelment would  
25 incur at the next jury draw which would be in approximately

1 two weeks.

2 So I essentially gave the defendant the option to  
3 do that, and I asked counsel to confer and tell me whether the  
4 defendant wanted to proceed with the jury that has been  
5 selected or whether the defendant wanted to select a new jury  
6 with a new impanelment process, and I was inclined to defer to  
7 the defendant's request on that.

8 I asked counsel to confer, consult with their  
9 client. The message I got back was they have conferred and  
10 counsel is not seeking to have a new jury impaneled.

11 I simply want to verify with Mr. Cantwell that that  
12 is in fact your desire here, that is, that we not proceed with  
13 a new impanelment and instead it is your preference that we  
14 proceed with the jury that has been selected.

15 Mr. Cantwell, can you just tell me, have I got that  
16 right? Is it your desire here to proceed with the jury that  
17 has been selected rather than to seek a new jury impanelment?

18 THE DEFENDANT: It is, Judge.

19 THE COURT: All right. Thank you. I appreciate  
20 that.

21 I appreciate the parties working with me on these  
22 issues. These are challenging times in which to conduct a  
23 trial, and we want to be sure we're doing it the right way.  
24 We want to make sure that the defendant's constitutional  
25 rights are respected, and I'm erring on the side of caution

1 here. That's why I was willing to offer a new impanelment,  
2 but the defendant has thought about the issue, consulted with  
3 counsel and made a decision on it, and I'm perfectly fine in  
4 proceeding as we have scheduled.

5 So I'm ready to bring the jury in. Are there other  
6 issues that the parties need to take up with me before we  
7 bring the jury in?

8 MR. WOLPIN: Just one brief issue in relation to  
9 opening, your Honor.

10 I've had obviously some conversations in the last  
11 either phone or Zoom meeting about what was and wasn't  
12 presentable within the opening. We talked about audio and  
13 transcripts and the like not being quoted verbatim, but  
14 discussions were had and I took that to heart.

15 The only exhibit I intended to display was a  
16 physical exhibit which was the alleged victim's avatar or his  
17 public presentation of himself that my client would have been  
18 familiar with at the time of the alleged statements.

19 And so from our perspective this is evidence that  
20 is relevant and is coming in. I don't intend to do more with  
21 it than show it to them so they understand within the context  
22 of my opening who that person presented themselves to be, and I  
23 certainly expect that to be admitted.

24 I notified this morning the government of my  
25 intent, I wasn't looking to surprise anybody and, you know,

1 the government does not think that should be showed at this  
2 time. I think it should, and I think rather than --

3 THE COURT: Let me stop you and step back because I  
4 want to make sure that you don't have a misimpression about my  
5 position with respect to opening statements.

6 I'm not saying that there is a blanket prohibition  
7 on quoting from transcripts of documents that the parties have  
8 a reasonable basis to believe will be admitted into evidence.

9 For example, I would be surprised if the government  
10 didn't intend to quote from transcripts of communications that  
11 are the communications at issue here.

12 It's more about the issue of line drawing about  
13 when information becomes either so prejudicial or so unduly  
14 repetitive and a waste of time that I might not allow it, and  
15 I've just informed the parties that I intend to postpone  
16 decision-making on those line-drawing questions until the  
17 evidence is being offered.

18 So I don't want voluminous detailed statements in  
19 the openings about evidence that may never get to the jury.  
20 That's where I'm drawing the line here for openings, and I'm  
21 reserving the right to make a final decision on how far I'm  
22 going to let the parties go until I have to make that decision  
23 when the evidence is actually offered.

24 Now, the avatar. Just refresh my memory. What is  
25 the avatar like, why do you want to bring it out in the

1 opening, and then I'll hear from the government as to why they  
2 don't think it should be permitted.

3 MR. WOLPIN: So the avatar was Cheddar Mane's  
4 public presentation within the Bowl Patrol. So I think we can  
5 actually put it up for the Court to see. It is how he  
6 presented himself online. Again, it is something that  
7 predates I believe -- I have reason to believe predates the  
8 interaction in this case. That is how my client knew this  
9 individual, not as Ben Lambert or not as some other entity,  
10 but as this individual.

11 Obviously the Court through other hearings is aware  
12 of the importance of context, of reasonability, of intent, and  
13 a number of these statutes, and so from our perspective the  
14 jury is going to see this. Seeing this now allows them to  
15 understand in a way that -- you know, I can go on for a  
16 paragraph about what it looks like, but I have the thing. And  
17 the reason we present evidence is so that the jury can see  
18 what actually was known and available.

19 THE COURT: So I don't -- I am not a person who  
20 engages in any kind of interactions on social media, so you'll  
21 just tell me. The avatar is a way in which people like your  
22 client and Cheddar Mane present themselves to the Internet  
23 world? They take an image and that is available when they  
24 make entries under their own name? Is that what happens?

25 MR. WOLPIN: It depends on the platform, but you

1 can present yourself through any photograph or visual  
2 representation along with your name. This is one that this  
3 individual chose to use to represent himself online.

4 THE COURT: Did he represent himself in that way on  
5 platforms that will be discussed in evidence that will involve  
6 communications in which Cheddar Mane and the defendant were  
7 engaged?

8 MR. WOLPIN: I certainly have reason to believe so,  
9 but if I could just have a moment.

10 (Attorney Wolpin confers with the defendant)

11 MR. WOLPIN: Okay. Alternatively, could you bring  
12 up Bates 6.

13 You can see this is another version of the avatar  
14 that was in fact posted on Mr. Cantwell's website. There will  
15 be no dispute, I believe, of his familiarity with it. It's  
16 the same basic premise. Machine guns or Mane on the chest.

17 (Court Reporter asks Attorney Wolpin to turn his  
18 microphone on)

19 MR. WOLPIN: Oh, excuse me.

20 This was presented on Telegram through the Bowlcast  
21 website, which is something the jury is going to see and hear  
22 about. This is dated July 4, 2018, so we know a date from  
23 that. We know when that date occurred and that it predated  
24 the relevant act in this case from 2019.

25 So this one I can show for certain. I know exactly

1 where it was presented. It was presented on the Bowlcast  
2 website through Telegram. It was presented and familiar to  
3 Mr. Cantwell prior to the interaction.

4 THE COURT: And what's the theory under which you  
5 say it would be relevant?

6 MR. WOLPIN: In the same manner that other evidence  
7 is relevant. For two reasons. One being that the defendant's  
8 understanding of how this person presented themselves, what  
9 language they used, what imagery they used, how they wanted  
10 themselves to be seen matters in understanding what intent one  
11 would need to have to threaten someone whose public persona  
12 and efforts are alike.

13 Additionally, within the cyberstalking statute  
14 there's a reasonability question of the person receiving it as  
15 far as whether you would expect a reasonable person in that  
16 position to have emotional distress. When this person is  
17 presenting themselves like this, it's a far different  
18 expectation about how that person is going to respond than  
19 maybe if it's someone who, you know, presents in a more  
20 conventional way.

21 So I think it certainly is going to be relevant  
22 from a trial perspective and something that I expect the jury  
23 to see in this case.

24 THE COURT: All right. I understand your point,  
25 counsel, and I'm not going to make any definitive ruling on

1 the admissibility of the avatar in a trial. But if it is  
2 relevant, it strikes me as being minimally relevant, and so  
3 I'm not going to -- I'm going to instruct you not to refer to  
4 it in the opening statement. I need to make that relevance  
5 call when the evidence is offered so that I can understand  
6 better how it supports your case.

7           So I am going to sustain the government's objection  
8 to referencing it in the opening statement, but I want to be  
9 clear. I am not trying to restrict your ability to describe  
10 the Bowl Patrol and Cheddar Mane and what the evidence will  
11 show about that, and I believe you can fairly and fully  
12 present your argument about context initially in the opening  
13 statement and when the time comes through evidence.

14           But I just am having trouble seeing how an image  
15 like that really conveys information that bears on your  
16 defense. That's how I have trouble seeing it at the present  
17 time.

18           Look, I appreciate you refrain from eye-rolling  
19 when I say things that you don't like. Of course, counsel,  
20 your job is to basically make your arguments by speaking. And  
21 when I rule, you accept them and then reverse me on appeal,  
22 which is fine, but don't eye-roll, you know, don't take that  
23 kind of reaction when I explain my rulings, okay?

24           Do you understand?

25           MR. WOLPIN: Yes, I understand. I apologize.

1 THE COURT: Okay. Good. Thank you.

2 So I sustain the government's objection to the use  
3 in the opening statement without prejudice to the defendant's  
4 right to elicit the information during the course of the  
5 trial.

6 MR. WOLPIN: Thank you.

7 THE COURT: All right. Is there anything else we  
8 need to take up?

9 Okay. We can bring the jury in.

10 MR. DAVIS: Judge, there is one other matter. I'm  
11 sorry.

12 THE COURT: Logistics are difficult enough. If I  
13 ask you if there's anything else, tell me.

14 MR. DAVIS: I apologize.

15 THE COURT: All right. What's up?

16 MR. DAVIS: The first witness will be in Missouri  
17 by live two-way video.

18 THE COURT: This is one that's done by agreement --

19 MR. DAVIS: Correct.

20 THE COURT: -- with a waiver by the defendant of  
21 any confrontation clause rights that he may have to the  
22 presentation of that testimony.

23 There is another witness who the government wants  
24 to testify by two-way. The defendant is fully preserving his  
25 rights under the confrontation clause to object to that.

1 I have that matter under advisement and hope to  
2 give a ruling soon. I'm reading the cases that the parties  
3 have presented me.

4 So just let me be clear. The defendant is not  
5 waiving any confrontation clause rights he has to any other  
6 video testimony by any other witness.

7 But Mr. Cantwell, I want to just make sure with  
8 respect to this witness and this witness only, do you agree to  
9 waive any rights under the confrontation clause to have that  
10 witness testify in person and instead agree that that witness  
11 can testify by two-way video?

12 THE DEFENDANT: I do, Judge.

13 THE COURT: And I want to be clear. You have a  
14 really important argument with respect to another witness.  
15 You are preserving all of your rights with respect to that  
16 other witness.

17 THE DEFENDANT: I completely understand that,  
18 Judge. Thank you.

19 THE COURT: Okay. Thank you. You can be seated.

20 All right. I'll instruct the jury on this, that  
21 they will be receiving this witness testimony by two-way  
22 video.

23 (IN COURT - JURY PRESENT)

24 (Deputy clerk swears in the jury)

25 THE COURT: Good morning, members of the jury.

1 I'm sure you don't necessarily feel this way, but  
2 this is the first time I've been in court with a jury since  
3 March, and it's a good thing for me to be back here conducting  
4 jury trials again.

5 I've spent a good chunk of the last 40 years of my  
6 life in courtrooms in different places, the last 28 years  
7 here, and this is going to be different in some ways from the  
8 ways in which we conduct trials. Please bear with us. We're  
9 going to do everything we can to make this an experience  
10 that's comfortable for you in which you feel safe and in which  
11 you can evaluate the evidence that you're going to be hearing  
12 over the next few days and that you can render a verdict that  
13 is true and honest and fair to the defendant and to the  
14 government.

15 There are going to be some differences. Some of  
16 these are obvious. Jurors are seated in a different  
17 configuration from the way in which we ordinarily have jurors  
18 sit, we're all wearing masks, and there will be times in which  
19 I may be interacting with the lawyers using a headset like you  
20 did during the jury selection process where I will be  
21 communicating with the lawyers and they can hear me and I can  
22 hear them, but you won't be able to hear what we're saying.  
23 In a non-pandemic trial that would be done at sidebar, but we  
24 won't have the lawyers come up to sidebar. So if we do have  
25 to speak with them -- if I do have to speak with them on the

1 headset, just bear with us as you ordinarily would at a  
2 sidebar conference.

3 I know you're all carefully following the court  
4 staff's instructions with regard to social distance, and I  
5 would ask you to please follow those instructions throughout  
6 the trial for your safety and the safety of the other members  
7 of the jury.

8 Other than that I'm going to try to have this run  
9 very much like a regular trial.

10 So how's it going to work? Well, we're going to  
11 start, like we do with all trials, with opening statements.  
12 So that's going to happen in just a couple of minutes.

13 The lawyers will have an opportunity -- each side  
14 will have an opportunity to speak with you and give you kind  
15 of a preview of what they expect the evidence in the case will  
16 show.

17 After we complete the opening statements, the  
18 prosecutors will present their evidence through a series of  
19 witnesses and exhibits.

20 The prosecutors will have a chance to ask questions  
21 called direct examination of witnesses. The defense will have  
22 an opportunity to cross-examine witnesses.

23 After the defense is completed, the prosecution  
24 will have a brief opportunity to ask redirect questions, and  
25 generally speaking we'll be done with those witnesses at that

1 point. I don't generally allow multiple rounds of  
2 examination. I will make exceptions in unusual circumstances.

3 We will then proceed one at a time through the  
4 government's witnesses. And when the government has offered  
5 all of the evidence it wants to offer, the government will  
6 rest its case and the defense will have an opportunity to  
7 present any evidence it chooses to present.

8 I want to remind you of something that we talked  
9 about during the jury instructions. The burden of proof in  
10 this case is on the government, as it always is, to prove  
11 every element of every charge beyond a reasonable doubt.  
12 Unless the government proves the defendant's guilt beyond a  
13 reasonable doubt, the defendant must be found not guilty.

14 The defendant is entitled to a presumption of  
15 innocence. Until and unless the government proves his guilt  
16 beyond a reasonable doubt, the defendant remains innocent and  
17 you cannot find him guilty unless the government proves guilt  
18 beyond a reasonable doubt.

19 The defendant has no obligation to present any  
20 evidence or to testify. The defendant has a constitutional  
21 right to remain silent and you can't -- if the defendant  
22 elects not to produce evidence or not to testify, you can't  
23 hold that against him in any way. The government has the  
24 burden of proof here, not the defense.

25 But if the defendant elects to produce any

1 evidence, it will come in in the same way that the  
2 government's evidence came in. Each defense witness will  
3 testify, the defense will ask questions, the government will  
4 cross-examine, the defense will have an opportunity to ask  
5 redirect, and that will be the end of those witnesses.

6 When the defendant's case is completed, I will give  
7 you jury instructions on the law. So we're both judges here,  
8 you and I, but we have different roles. I'm the judge of the  
9 law. I tell you what the law is that you will apply in  
10 deciding this case, and that's my job.

11 Your job is to find the facts and determine whether  
12 the government has proved the defendant's guilt beyond a  
13 reasonable doubt given the instructions on the law that I will  
14 give you.

15 Before I give you those instructions, the parties  
16 will have an opportunity to make their closing arguments. So  
17 each side will present a closing argument, and the government  
18 may have a brief rebuttal argument, and then I'll instruct on  
19 the law. When that's all done, that's when your job of  
20 deliberations begins, okay?

21 So there are some important things to keep in mind  
22 here.

23 First, you need to keep an open mind. You can't  
24 make up your mind about the guilt or innocence of this  
25 defendant until you've heard all the evidence and really until

1 you've heard the arguments, closing arguments, and my  
2 instructions because you won't really know the law that you'll  
3 be applying here until I give it to you at the end of the  
4 case. So keep an open mind throughout the entire trial, all  
5 right?

6 Your verdict in this case has to be based entirely  
7 on what happens here in court. You will hear testimony from  
8 witnesses, you will receive exhibits, and you will be able to  
9 use your common sense and draw reasonable inferences from that  
10 witness testimony and those exhibits. That's something we  
11 call circumstantial evidence. And you will have to base your  
12 verdict on all of that, what happens here in court.

13 I've reminded you not to go out and expose yourself  
14 to any discussions of the case in the media. I've reminded  
15 you not to go out and conduct any kind of investigation about  
16 this case or even about what your responsibilities are as  
17 jurors.

18 Everything you need to decide this case will be  
19 provided to you here in court, all right? So please remember  
20 those instructions throughout the case.

21 We'll go for about an hour and a half, usually not  
22 much longer than that, and take a break. We'll take a break  
23 at lunch. We're going to bring your lunch in to you. You'll  
24 have a chance during the break to get outside if you need to  
25 take the mask off for a little bit, and we want to make sure

1 you have a good time for lunch but we'll probably just take a  
2 one hour break, just get your lunch, the lawyers get their  
3 lunch, and then we move right back in for the afternoon.  
4 We'll take a break in the middle of the afternoon.

5           You aren't really allowed to speak out. So as a  
6 general matter, you have to sit and remain silent during the  
7 proceedings. But if somebody needs a break for some reason,  
8 you know, you need to use the restroom and you can't wait or  
9 you need something, just raise your hand and I'll ask you if  
10 you need to take a break, okay?

11           I don't have a problem if somebody has a bad back  
12 and they want to stand and stretch a little bit, that's fine  
13 too. Feel free to do that. Just try not to obstruct any  
14 other juror's view.

15           Generally speaking, you will see the exhibits  
16 displayed on a screen. It's possible though that there will  
17 be times where an exhibit is being displayed but only the  
18 lawyers and the judge and the witness can see it, not you.  
19 Don't worry about that because sometimes exhibits are not  
20 fully admitted. Until they're fully admitted, they can't be  
21 shown to you. But if you think you should be seeing something  
22 and you're not by chance, again raise your hand. I'll ask you  
23 if there's a concern about that.

24           That light on there tells me -- if you look on the  
25 front of the bench there behind some of you in the very front

1 row, it tells that you're seeing what I'm seeing. So if that  
2 light is on, I know that you should be seeing what I'm seeing.  
3 If it's not on, it's probably because you shouldn't be seeing  
4 the exhibit. But if you have some concern about that, let me  
5 know.

6 You also have notebooks. I want to tell you about  
7 what your general responsibilities are with respect to  
8 note-taking.

9 First of all, you do not have to take any notes,  
10 all right, no obligation to take notes whatsoever. You're  
11 free to take notes if you choose, but if you take notes, don't  
12 let it detract from your responsibility as a juror. You need  
13 to be watching the witnesses, listening to the witnesses,  
14 looking at exhibits.

15 Your job is not to transcribe what happens in  
16 court. We fortunately have a very highly-trained, skilled  
17 person here who will take care of that for us, and you don't  
18 need to make a transcript, all right? So don't get distracted  
19 with note-taking. But if you want to take notes, feel free to  
20 do that.

21 There are a couple of things to keep in mind about  
22 notes. First, no one but you will ever see your notebook. At  
23 the end of every day you're going to put it in an envelope.  
24 The envelopes will be collected. Nobody is going to look at  
25 them. It will be given back to you the next day. At the end

1 of the case your notebooks will be destroyed. So you can  
2 write what you want in your notebook, but I instruct you, you  
3 can't show your notebook to other people, other jurors. The  
4 purpose of the notebook is not to help convince other jurors  
5 of something. It's to help refresh your memory if you find it  
6 helpful in doing so.

7 So feel free to take notes if you want. You don't  
8 have to take notes. Don't show your notes to anybody else.  
9 Don't read from your notes to anybody during deliberations.  
10 We will collect the notes at the end of the day and destroy  
11 them at the end of the trial.

12 So those are some general instructions about how to  
13 proceed, and I think unless --

14 Does counsel need to see me with respect to any  
15 additional matters before we go to opening statements?

16 No. Okay. Thank you. Let's proceed right to  
17 opening statements. The government will go first.

18 MR. DAVIS: Good morning.

19 This is an extortion case. It's about the  
20 defendant, Christopher Cantwell, a white nationalist radio  
21 personality in New Hampshire who wanted to get something.

22 It's about the victim, Benjamin Lambert, known  
23 online as Cheddar Mane, who is a Missouri husband and father  
24 also involved in white nationalism and who had what the  
25 defendant wanted.

1           And it's about the private threats the defendant  
2     made in writing and the actions he took against the victim and  
3     his family over the course of a few days in June of 2019 all  
4     to get what he wanted.

5           So what did the defendant want so badly? He wanted  
6     the personal information of a third white nationalist who went  
7     by the name Vic Mackey. The defendant wanted Vic Mackey's  
8     name, address, and identifying information so he could dox Vic  
9     Mackey. That's D-O-X, dox.

10           You'll hear a lot about doxing in this trial.  
11     Doxing happens when an online person using a pseudonym is  
12     outed on the Internet when the actual name, actual address,  
13     and actual identifiers of an anonymous social media figure are  
14     suddenly revealed for all the world to see.

15           When a person is doxed, the real world can come  
16     crashing down on him. Particularly when its target has said  
17     things that are abhorrent and condemned. Doxing can wreck a  
18     person's reputation, ruin his ability to function in society,  
19     causing him to lose his employment and result in threats and  
20     even violence from hostile members of the public.

21           The defendant who knew all of this detested Vic  
22     Mackey and he wanted to destroy him by doxing him. And so  
23     when the defendant saw a golden opportunity to extort Ben  
24     Lambert, a/k/a Cheddar Mane, in Missouri into giving him Vic  
25     Mackey's identifying information, he took it.

1           The indictment contains three charges or counts. I  
2 apologize in advance for the coarse language. All the counts  
3 in the indictment name the defendant and pertain to the same  
4 time period, mid June of 2019, around the Father's Day  
5 weekend.

6           Count 1 alleges that the defendant, with the intent  
7 to extort from the victim personal identifying information for  
8 Vic Mackey, transmitted a communication in interstate commerce  
9 containing a threat to injure the victim's wife.

10           The defendant sent a message through the Telegram  
11 app stating: So if you don't want me to come and fuck your  
12 wife in front of your kids, then you should make yourself  
13 scarce. Give me Vic. It's your only out.

14           Count 2 charges that the defendant again with  
15 intent to extort personal identifying information for Vic  
16 Mackey knowingly transmitted in interstate commerce  
17 communication containing a threat to injure the victim's  
18 reputation and a threat to accuse the victim of a crime by  
19 doxing the victim. Meaning posting photos of the victim and  
20 his family and disclosing the victim's home address in  
21 Missouri and by reporting the victim as a dangerous and  
22 drug-using father to Child Protective Services and to law  
23 enforcement.

24           The final count, Count 3, charges cyberstalking.  
25 It says that the defendant with the intent to harass and

1 intimidate the victim used the telephone and the Internet to  
2 engage in a course of conduct that placed the victim in  
3 reasonable fear of serious bodily injury to his wife and  
4 caused or would be reasonably expected to cause substantial  
5 emotional distress to the victim and his wife.

6 The course of conduct included three separate  
7 actions:

8 First, the private Telegram messages in which the  
9 defendant threatened to dox the victim, report the victim to  
10 Child and Protective Services, and rape the victim's wife.

11 Second, the defendant actually doxed the victim by  
12 posting the victim's address information along with photos of  
13 the victim, his wife, and their three small children on the  
14 Internet.

15 And third, telephoning the Child Abuse and Neglect  
16 Hotline in Missouri and making a report against him.

17 So that's the indictment.

18 The government expects the evidence will show the  
19 following:

20 By the year 2018 Christopher Cantwell was a known  
21 media personality in the white nationalist movement. From his  
22 residence in Keene he had a live call-in radio show called  
23 Radical Agenda and he was active as a blogger and in various  
24 chat groups.

25 Initially, Mr. Cantwell was on friendly terms with

1 a far-right Internet chat group called the Bowl Patrol. The  
2 Bowl Patrol was an association of men who espoused extreme  
3 views.

4 Vic Mackey was the founder and the leader of the  
5 Bowl Patrol, and the victim who used the name Cheddar Mane was  
6 a member of the chat group.

7 The Bowl Patrol was named after the distinctive  
8 bowl haircut of Dylann Roof, a man who murdered nine people in  
9 2015 in an African American church in Charleston, South  
10 Carolina, and was later convicted and sentenced to death.

11 The Bowl Patrol's product, other than their  
12 Internet chats and memes, was the Bowlcast, a series of nine  
13 podcasts featuring offensive humor and the endorsement of  
14 sexism and racism and anti-Semitism and violence.

15 On the first Bowlcast in 2018 the defendant was a  
16 special guest, and Bowl Patrol members, including the victim  
17 in this case, sometimes called into the defendant's radio show  
18 and contributed.

19 But at the end of 2018 relations between the  
20 defendant and the Bowl Patrol began to sour. Bowl Patrol  
21 members started making prank calls in to the show in which  
22 they imitated voices or made stupid jokes.

23 In February 2019 someone defaced the defendant's  
24 website by posting spam and crude images on it.

25 The defendant filed a complaint with the FBI's

1 Internet Crime Complaint Center and identified two Bowl Patrol  
2 members as the culprits, Vic Mackey and another man named  
3 Mosin-Nagant, and the defendant declared on the Internet that  
4 he was going to ruin the Bowl Patrol. In one post he wrote:  
5 I have dox on several of these Bowl Patrol idiots and I'm  
6 going to start dropping them until they rat-out Vic.

7 In the meantime, the defendant came into possession  
8 of some of the victim's personal information, including his  
9 home address in Missouri, as well as photos of the defendant  
10 and his wife and the children.

11 The defendant received the photos and information  
12 from his ex-girlfriend, a woman known as Peach, who along with  
13 another Bowl Patrol member visited Mr. Lambert at his home in  
14 Missouri around Thanksgiving of 2018. After that visit the  
15 defendant stored the materials on his computer until he was  
16 ready to use them.

17 In March of 2019 the defendant overtly threatened  
18 the victim with doxing. In a chat the defendant told Cheddar  
19 Mane to, stay the fuck away from me and my platforms or I'll  
20 dox your stupid ass. When you get doxed, it's all because of  
21 Vic, remember that, the defendant said.

22 The defendant definitely got the victim's  
23 attention, and after that Cheddar Mane did not contact the  
24 defendant. He also asked his Bowl Patrol associates to do  
25 likewise. The victim did not want to be doxed since no one in

1 his community knew about his online moniker or his association  
2 with the Bowl Patrol.

3 A few months went by with the feud seemingly over  
4 between Cheddar Mane and the defendant, but on June 15, 2019,  
5 an incident happened that changed everything. The victim,  
6 Cheddar Mane, clicked on a link that someone else posted and  
7 found himself in a chat group where Chris Cantwell was  
8 present. After a short time the victim left the chat or was  
9 excluded from the chat, but Cantwell had noticed him.

10 Mr. Cantwell acted immediately. Over the next 24  
11 hours in a series of direct messages to the victim's Telegram  
12 account, the defendant sent the private threats described in  
13 this indictment.

14 The defendant's Telegram message, much like a  
15 private text message, came in to the victim, the first one, at  
16 about 8 o'clock p.m. Central Time on June 15th: I guess you  
17 forgot the lesson which kept you away for a short while, do  
18 you need to be reminded, the defendant said.

19 The victim did not initially respond, but after a  
20 half hour the defendant wrote the name of the defendant's  
21 street in Missouri -- I'm sorry, the name of the victim's  
22 street in Missouri. That's all he wrote, just the street.

23 Then the victim did respond: What are you talking  
24 about? What do you even stand to gain here? Every time you  
25 think someone you think is in the Bowl Patrol talks shit about

1 you, a public figure, you threaten to dox me? I honestly  
2 don't know what I even did. I followed the link into a group  
3 I didn't even know you were in. That's what the victim said.

4 The victim was trying to be reasonable, but he was  
5 scared and worried about being doxed. He was so worried that  
6 he wrote drafts of possible replies to the defendant's threat  
7 and he took screenshots of them.

8 He sent those screenshots to a mentor of his named  
9 Paul Nehlen and he asked Nehlen for his advice. He also  
10 telephoned Nehlen to discuss the situation and how to respond.

11 Finally the victim -- the defendant finally replied  
12 around 3 o'clock a.m. Central Time on June 16th. He said:  
13 Get a fucking life or I will ruin the one you have.

14 The victim wrote back that afternoon: All I can do  
15 is just leave you alone and tell other people to do the same,  
16 which I have done. Seriously, man, I couldn't care less about  
17 what you're trying to do these days.

18 The defendant replied the victim was a fucking liar  
19 and that he was going to lose everything you have. The  
20 defendant threatened to post a photo after which he said:  
21 You're going to start getting unexpected visitors. And the  
22 defendant wrote: And I don't care if it's you causing the  
23 trouble. You're the one who's going to suffer because you're  
24 the one I can get.

25 Then at 3:47 p.m. on June 16th the defendant

1 revealed his purpose. Vic Mackey. If you want to dox Vic, he  
2 said, he's a better target, but if you give me fake info, then  
3 your wife is going to have trouble sleeping at night until she  
4 leaves you and takes your kids away. So if you don't want me  
5 to come and fuck your wife in front of your kids, then you  
6 should make yourself scarce. Give me Vic. It's your only  
7 out. And after a pause the defendant wrote: I guess I'm  
8 going to have to prove my seriousness.

9 The victim asked the defendant to show him the  
10 picture he had. The defendant sent it. It was a photo of the  
11 defendant's wife at Christmastime in her kitchen smiling and  
12 holding an infant with the defendant's two other small  
13 children nearby. More where that came from, the defendant  
14 wrote, and then the defendant added, I bet one of my Incel  
15 listeners would love to give her another baby.

16 Incel is Internet slang for voluntarily celibate  
17 men who cannot find a sexual partner.

18 Next the defendant wrote: You think the FBI would  
19 take issue with an LSD user owning guns around kids? And he  
20 followed up with another photo, this of the victim with strips  
21 of cardboard on his tongue. Give me Vic, the defendant  
22 directed.

23 When the victim still refused to supply Vic  
24 Mackey's personal information, the defendant spelled out his  
25 plan: All right. Since you're obviously not understanding

1 the severity of this, I'll do you a favor. On Tuesday I'm  
2 going to send every episode of Bowlcast along with your  
3 identifying information to whatever the local equivalent of  
4 CPS is in your jurisdiction, but I'm pretty sure once that  
5 visit comes you'll understand that this is serious. If that  
6 doesn't work, I'll escalate until I get what I want. Tell Vic  
7 if he gives himself up, he can save your family. CPS will  
8 visit you soon.

9           Although Mr. Lambert, the victim, put up a brave  
10 face and he even taunted the defendant, he took the threat  
11 seriously and not as a joke. He lost sleep for a while.

12           With Paul Nehlen he decided to post the entire  
13 threatening exchange after covering up his address and  
14 covering up the pictures of his family, but to post that in  
15 the Bowl Patrol's chat group so his associates would know  
16 exactly what the defendant was doing to him.

17           And on June 18th the victim even sought the advice  
18 of his lawyer asking whether he should contact the county  
19 sheriff in case the defendant actually went through with his  
20 threat.

21           In the meantime, the defendant did follow through.  
22 On June 17th to the 293 members of the Radical Agenda chat  
23 group the defendant doxed the victim just as he had  
24 threatened. He posted for everyone to see two photographs of  
25 the victim's wife and children and a photo of the victim and

1 the address, and then he added as commentary: That's Cheddar  
2 Mane, a/k/a Cheddy Blac, and tomorrow morning I'm calling CPS  
3 to give them every episode of Bowlcast and inform them that  
4 this acid-dropping fake Nazi is endangering these children  
5 with his behavior.

6 The defendant identified the victim's home town and  
7 street saying: If I could just drive down to that street and  
8 town in Missouri and shoot this idiot, I would, but I can't so  
9 I'll let the law do it. I think when CPS hears that fucking  
10 podcast he hosts, they'll pay his fucking criminal ass a  
11 visit.

12 And the last thing in that doxing: I hope the CPS  
13 workers in Missouri will break every rule and destroy this  
14 scumbag's life.

15 And so the defendant doxed Cheddar Mane and his  
16 family all because he wouldn't supply him with Vic Mackey's  
17 information so the defendant could dox Vic Mackey.

18 Later that same day, June 17th, the defendant  
19 dialed up the Missouri Child Abuse and Neglect Hotline and  
20 made a complaint about the victim. You'll hear a recording of  
21 that call in the trial.

22 The defendant said that Cheddar Mane was  
23 potentially putting the child in danger. The defendant  
24 identified Cheddar Mane, the father of the children, as a Bowl  
25 Patrol member and a drug user and offered to send the Missouri

1 agency all of the Bowlcast recordings. I think this guy is a  
2 problem and the thing is that what he does to the best of my  
3 understanding is not a criminal act. I am looking to make  
4 this guy uncomfortable is the truth of the matter. I think he  
5 is bad for my cause, and so I said what can I do about this,  
6 and so I called you.

7 Although it documented the defendant's call, the  
8 Missouri agency determined that the call did not rise to the  
9 level of a report of abuse or neglect. Ultimately, the agency  
10 did not investigate the defendant's complaint.

11 Two days later on June 19th the defendant (sic)  
12 called the victim's (sic) radio show directly: I just wanted  
13 to thank you very much for posting pictures of my wife and --  
14 but the defendant immediately cut off the call, gave no  
15 explanation for it to his listeners, and moved on as if  
16 nothing happened.

17 After that there were no more communications  
18 between the defendant and the victim, Cheddar Mane, Ben  
19 Lambert.

20 The FBI learned about the defendant's threats and  
21 extortion in July of 2019. They interviewed the defendant in  
22 September. The defendant admitted that he had threatened to  
23 dox Cheddar and call CPS if Cheddar did not provide Mackey's  
24 information. He also admitted that he had called CPS in  
25 Missouri. He explained that he felt that he did not have

1 protection from law enforcement and that he had to take action  
2 himself, but the defendant said nothing about the rape threats  
3 and claimed that he had deleted the chats and not retained any  
4 records of his communications with the victim.

5 In a second shorter interview with the FBI in  
6 October of 2019, the defendant was shown screenshots of his  
7 Telegram messages with the victim, and he admitted he sent  
8 them.

9 But the defendant knew he had a problem. He knew  
10 he had committed extortion. In a telephone call with his  
11 former girlfriend in December 2019 the defendant explained:  
12 The thing that there's liability on is, like I said, give me  
13 Vic's information, you know, to prevent me from doing  
14 something.

15 In another call in February of 2020 with a  
16 different woman the defendant explained: What I threatened to  
17 do is dox this fucking asshole, and then I end up fucking  
18 adding CPS to the fucking mix, and I called CPS and they've  
19 got the phone call of that. So, like, you know, that's a  
20 different category of -- you know, it's not legal to do that.

21 And in another call in March the defendant  
22 explained: You can harm someone's reputation, you can dox  
23 them, but if you say give me something in exchange for it,  
24 give me something to prevent me from doing that, then that's a  
25 crime.

1           On January 23rd of 2020, the defendant was arrested  
2   at his residence in Keene, and the FBI executed search  
3   warrants. On several computer devices, including his cell  
4   phone, the FBI found that the defendant had stored records of  
5   his threatening text exchange with the victim as well as the  
6   personal information and photographs of the victim and his  
7   family that he collected.

8           That's a summary of the evidence. You'll hear a  
9   lot of bad language in this trial and you will see and hear  
10  images you may find appalling and offensive.

11          The key will be to focus not on the atmosphere but  
12  on the actual charges in the indictment, the actual elements  
13  of the offenses, and the actual evidence that proves them.

14          I'll ask you to use your common sense and your  
15  experience, ask yourself whether the evidence is corroborated  
16  by other evidence, and listen and read the defendant's own  
17  words as he wrote them and spoke them.

18          I emphasize writing. The distinctive thing about  
19  this crime is it's all written down or recorded. You will be  
20  asked to return again and again to the defendant's written  
21  threats on the Telegram message app. Note that they occurred  
22  over the course of many hours with long gaps in between with  
23  time to consider and reconsider and write and rewrite and then  
24  push send. What do those writings tell you about the  
25  defendant's intent?

1           In the end the evidence will prove beyond any  
2     reasonable doubt that the defendant sent a communication  
3     containing a threat to injure the victim's wife with intent to  
4     extort something he wanted to get. That he also sent a  
5     communication containing a threat to injure the victim's  
6     reputation and accuse him of a crime again with intent to  
7     extort that same thing of value to him.

8           And finally, that with intent to harass and  
9     intimidate the victim he engaged in a course of conduct that  
10    placed the victim in reasonable fear of serious bodily injury  
11    to his wife or caused or would reasonably be expected to cause  
12    substantial emotional distress to the victim or his wife.

13           I'm confident you'll listen carefully and follow  
14    the Court's instructions.

15           At the close of the evidence Ms. Krasinski and I  
16    will ask you to return a verdict of guilty as charged.

17           Thank you.

18           THE COURT: Thank you. We'll hear from the defense  
19    now.

20           Mr. Wolpin.

21           MR. WOLPIN: Thank you.

22           THE COURT: I need to explain. We have a little  
23    bit of a break here because one of our staff is disinfecting  
24    surfaces that someone else will have to touch. So just bear  
25    with us while we do that. It happens very quickly and

1 unobtrusively.

2 (Podium and microphone are disinfected)

3 THE COURT: Thank you.

4 Mr. Wolpin, you can go ahead.

5 You'll see us doing that when witnesses get off the  
6 stand as well. We just want to make sure that any surface  
7 that someone is touching gets disinfected before somebody else  
8 touches it.

9 Go ahead.

10 MR. WOLPIN: Thank you.

11 Chris Cantwell wanted to be left alone. Chris had  
12 been pushed, taunted, and harassed for months to make him  
13 angry, to wind him up, to provoke a bigger and bolder  
14 response.

15 After asking his harassers to stop, after asking  
16 law enforcement to help make it stop, after posting online  
17 that he had talked to the FBI to try to make it stop, after  
18 months of harassment continued, it did not stop.

19 Chris responded in kind. He responded crudely with  
20 insults and anger with the only type of language his harasser  
21 would understand, but he did not seriously threaten to injure  
22 and he did not intend to extort. His intent was simple.  
23 Leave me alone. Just leave me alone.

24 Chris Cantwell did not threaten to injure, he did  
25 not intend to extort, and he did not cyberstalk. He is not

1 guilty.

2           Before we get to what happens in this case, I want  
3 to point out the following: The prosecution has asked you  
4 largely to focus on a tiny snapshot, that June 15th, June 17th  
5 time frame, and then for all kinds of malice on the part of  
6 Chris, a true threat to injure and intent to extort in that  
7 brief window of time.

8           But this case is a movie, not a snapshot. You need  
9 to see, hear, and understand a longer story, a bigger  
10 landscape, the men's relationship over months, the language  
11 they used with each other and the language they used in  
12 public. To understand Chris's intent, to understand why he  
13 felt he had to use the words he used in order to be left  
14 alone, you need to see the movie and not the snapshot.

15           Chris Cantwell, over here in blue, came to Keene,  
16 New Hampshire, because of our Live Free or Die motto and our  
17 libertarian ideals. He created a website and hosted an online  
18 radio show with callers. He did so under his own name. The  
19 website was christophercantwell.com. It was his public  
20 platform. It was his business. It was how he supported  
21 himself. How he paid the rent.

22           He operated like a white nationalist shock jock  
23 Howard Stern. That was his thing. Callers would call in and  
24 chat about everything from mainstream conservative politics,  
25 Trump, the Democrats, to far-right, far-fringe white

1 nationalist ideas.

2           The show was uncensored. His callers used crude  
3 and derogatory language. Chris said outrageous things, used  
4 filthy and sometimes racist language. He has significant  
5 notoriety because of his show.

6           He knows that many will not like him because of  
7 what he has said. He knows that you may not like him because  
8 of what he has said. But he says what he says under his own  
9 name. He doesn't hide behind a mask or fake name or online  
10 anonymity. Chris Cantwell stands in public for better or  
11 worse as Christopher Cantwell.

12           Now, you will also hear from Ben Lambert. He is  
13 the alleged victim in this case, but to Chris he was never Ben  
14 Lambert. To Chris he was Cheddar Mane or Cheddy Blac or some  
15 other moniker meant to hide Ben Lambert's true identity.

16           Ben Lambert was part of a group who hid behind  
17 nicknames and labels and characters who called themselves the  
18 Bowl Patrol. As the government explained, the Bowl Patrol  
19 honors the hairstyle of their self-chosen saint, the person  
20 they idealized, Dylann Roof, the mass murderer of nine black  
21 church-goers in South Carolina.

22           And Cheddar Mane and the Bowl Patrol used  
23 disturbing humor and talk and repetition to discuss rape and  
24 murder and hate and genocide over and over again.

25           In the fall of 2018 the Bowl Patrol and Cheddar

1 Mane developed a new hobby. The hobby was to troll Chris for  
2 sport. To push him, enrage him, destroy his show. Basically  
3 ruin him.

4 Chris had a brief relationship with the group  
5 online, but that quickly soured and to the Bowl Patrol Chris  
6 was a phony, a fake, a sellout, and whatever other word they  
7 could come up with. Not one of them.

8 So Cheddar Mane and the Bowl Patrol called Chris's  
9 show incessantly from different phone numbers and different  
10 characters to interrupt and to disrupt, and you will hear some  
11 of these calls. You will hear what they said, how angry they  
12 made Chris, how Cheddar Mane would laugh and discuss them on  
13 his own podcast about how their goal was to really piss him  
14 off.

15 What Cheddar Mane wanted was how far can I push  
16 Chris? How angry can I make him? How outrageous a reaction  
17 can I trigger?

18 What Chris wanted from Cheddar Mane and the Bowl  
19 Patrol was just leave me alone. Chris tried to make it stop.  
20 He contacted phone companies and Internet hosts to try to  
21 block their calls so at least they couldn't call in and ruin  
22 his show. He blocked Ben Lambert's phone at one point. That  
23 didn't work. They didn't leave him alone.

24 In February 2019 after four months of this, four  
25 months, the Bowl Patrol defaced his website with pornography

1 and violent content and Chris reached a breaking point.  
2 Enough. He reported his cyber harassers to the FBI in  
3 February.

4 What did the FBI do with that report of crimes  
5 against Chris Cantwell? They did nothing.

6 So Chris went online and he said to the world and  
7 he posted on an online post: I reported the Bowl Patrol to  
8 the FBI for harassing me. Stop. Just leave me alone.

9 But they didn't stop. They didn't leave him alone.  
10 The Bowl Patrol -- to the Bowl Patrol this only proved that  
11 Chris was the worst kind of white nationalist, a snitch, a  
12 rat, a federal informant who works with the FBI.

13 In March, another month later after Chris's plea  
14 for help from the FBI, Chris and Cheddar Mane were in an  
15 online chat. Chris told Cheddar Mane in that chat he would  
16 release his true identity, his Ben Lambert identity, if he  
17 didn't leave him alone.

18 The online Cheddar Mane calls for mass murder of  
19 children, but offline Ben Lambert has a wife and kids. Online  
20 Cheddar Mane jokes about rape and murder. While offline Ben  
21 Lambert hides himself from his wife and family and community.

22 Chris thinks in March by warning him, not by doing  
23 anything, by just saying I could release your identity, he  
24 loses power of anonymity. He would stop. The harassment  
25 would stop. Leave me alone.

1           In June 2019 Cheddar Mane and others from the Bowl  
2 Patrol enter a chat room of Chris's and they started in with  
3 their usual business, but this time instead of being some  
4 other anonymous name Cheddar Mane was Cheddy Blac, and Chris  
5 recognized it was Cheddar Mane once again and so Chris sent  
6 Cheddar Mane a private message, again as the government noted,  
7 referencing the prior time: Didn't you learn your lesson? I  
8 told you leave me alone.

9           And the two are quickly off and running.

10          You are going to see the full transcript of that  
11 back and forth over two days. It is ugly and crude. Both men  
12 are trafficking in the type of language that Cheddar Mane and  
13 Chris use.

14          Chris says nasty things about Cheddar Mane's wife.  
15 Says: If you don't want me to come and fuck your wife in  
16 front of your kids, then you should make yourself scarce.  
17 Make yourself scarce. Leave me alone.

18          But it was never a true threat. It was bluster and  
19 exaggeration and mutual linguistic combat. There was no true  
20 threat to injure or rape. The word rape was never used.

21          And thus, Chris is certainly not guilty of the  
22 first count the government discussed with you.

23          Now, Cheddar Mane being Cheddar Mane decides at  
24 some point to egg Chris on, to wind him up. He suggests  
25 something bad will happen to Chris's ex-girlfriend: I guess

1     you don't care what happens to her.

2                     And he starts into his usual business: Ha, ha, ha.  
3     Oh, no. I'm super scared. Do your best. You are hilariously  
4     pathetic.

5                     And the conversation ends with the capstone, the  
6     Bowl Patrol's favorite piece of humiliation, a naked  
7     photograph of Chris Cantwell -- or in this case a naked  
8     drawing of Chris Cantwell.

9                     Cheddar Mane knew at the time that this was  
10    over-the-top bluster, and he responded in kind because it was  
11    not a true threat. He pushed it along trying, as he had so  
12    many times before, to make the pot boil.

13                    And when it was all done, Cheddar Mane did not call  
14    the police out of fear for his safety. He called Chris's live  
15    show online to see if he can provoke an on-air dispute for his  
16    friends' entertainment. He does not after the exchange is  
17    over forward it to law enforcement. What did he do with it?  
18    He gets ready to post it online within hours. Again, with the  
19    naked picture of Chris over the top of his own family, and  
20    within hours this private chat has been posted to the Bowlcast  
21    website. Within days Cheddar Mane is online calling Chris a  
22    fed, snitch, nigger, kike. This was not serious. This was  
23    not a crime.

24                    And Chris, now that Cheddar Mane has made this all  
25    public, feels the pressure to follow through. His outrageous

1 insults, his private bluster, begin to reign down on him  
2 again. If he doesn't called CPS, if he doesn't follow  
3 through, what then?

4 So he posts a picture on a website frequented by a  
5 few hundred people, not CNN, not New York Times. Cheddar  
6 Mane's response online is this is "a pathetic dox." That's  
7 how he saw it.

8 Being egged on and being boxed in, Chris called  
9 CPS. You're going to hear that call my guess is in a few  
10 minutes. He gave his name. He gave his address. He told  
11 them who he was. He says why he's calling.

12 It wouldn't stop. Maybe this will work. Maybe  
13 they will leave me alone.

14 And the storm does temporarily pass at that point  
15 between Chris and Cheddar Mane. A number of months go by,  
16 July, August, September. In any of those months did Cheddar  
17 Mane go to the police? No. Why would he? Chris is  
18 "hilariously pathetic."

19 And the two men do not communicate again. No  
20 calls. No texts. No chats. One chapter in what is a long  
21 saga between Bowl Patrol and Chris Cantwell.

22 Child Protective Services doesn't show up at his  
23 house and the men move on.

24 So how do we get here then with a witness list full  
25 of FBI agents, with you in court, with Chris in court, if

1 Cheddar Mane never thought this was such a real thing that he  
2 should go to the police?

3 I'll take you back a few months in the story, back  
4 to February when Chris made his complaint to the FBI about  
5 them that they never looked into.

6 Chris goes to his local police department in May in  
7 Keene, a detective. He talks to him. The Keene detective  
8 helps him get in touch with the FBI. And in September, seven  
9 months after he asked for help, he showed up to meet with the  
10 FBI to in his mind talk about the harassment and cyber crimes  
11 that happened to him.

12 He shows up with no protections, no promises, no  
13 lawyer thinking and hoping he'll be treated like anyone else  
14 complaining of a crime committed against him. He knows he's  
15 not the most likable person. He understands that there's a  
16 risk that they will not see him as a crime victim, and what he  
17 found was the FBI's interest was in prosecuting Chris Cantwell  
18 and not investigating the crimes against him.

19 Chris begins to panic. He begins to worry and  
20 wonder, did I in fact do something illegal in June in that  
21 interaction? He never in a million years thought he made a  
22 threat to rape, but what about the Child Protective Service  
23 thing? What about the part about asking for the identity of  
24 the Bowl Patrol member?

25 And so he does what we all do now, the worst idea

1 we all have, which is to go to the Internet. Try to figure it  
2 out. Try to understand what he did. Try to figure out  
3 whether it's a crime.

4 And you'll hear several recordings, as the  
5 government noted, of him talking with his friends, stumbling  
6 and bumbling over statute numbers and legal terms, things he  
7 wasn't even charged with at the time, trying to figure out and  
8 explain what might give him liability.

9 The government will call these confessions, but  
10 listen carefully. Consider his fits and starts. Consider how  
11 he tries to piece together some way he might be liable.

12 So Chris meets with them in September thinking he's  
13 going to meet with them about this harassment, but it becomes  
14 about the interaction with Cheddar Mane.

15 And so after the meeting the FBI goes on down to  
16 Missouri to meet with Ben Lambert not really to look into  
17 Chris's complaint. The FBI had made a decision. Its purpose  
18 was to get what they needed out of Ben Lambert to prosecute  
19 Chris Cantwell. To get Ben Lambert on board.

20 They made their interest clear to Ben Lambert right  
21 from the beginning. They are the one that told him this  
22 threat was serious, not the other way around. They told him  
23 that the FBI was not "letting this go."

24 Ben Lambert was presented with a clear and obvious  
25 choice. If you give us what you want, if you say this is

1 serious, then Cheddar Mane, the FBI said, can go off into  
2 oblivion and disappear.

3           The converse was true, too. If you don't get on  
4 board, they make it very clear we know who you are online.  
5 We've listened to the Bowlcast episodes, we know what you say,  
6 and they hold that over his head.

7           To understand what that means -- to understand what  
8 it meant, excuse me, to Ben Lambert to have the FBI hold the  
9 Bowlcast over his head to get his cooperation, you need to  
10 understand a little bit about what was on those podcasts.

11           Ben Lambert will explain that as part of Bowl  
12 Patrol they tried to go to the edge of illegality. That fine  
13 line between when something is legal and something is illegal  
14 without crossing over it. But when you repeatedly go to the  
15 edge, sometimes you're going to cross that line.

16           Sometimes, as you will hear, the humor fades away  
17 and the true incitement to violence, the true terrorism that  
18 is the Bowl Patrol comes out.

19           He crossed that line, and the FBI told him if he  
20 said what they needed him to say, Cheddar Mane could go off  
21 into oblivion. That is how the FBI held Bowl Patrol over his  
22 head.

23           Ben Lambert knows what he said. He knows what now  
24 to say, and he told the FBI what they wanted to hear, and that  
25 is now why we're here. Chris as a criminal defendant. Ben

1 Lambert as an alleged victim.

2 Now, you will hear from us just like the government  
3 will approach you at the end and have a further discussion  
4 when we have the Judge's instructions of the law. At that  
5 time we'll go through in far finer detail the law of the case,  
6 but this is the broader picture. This is the greater story  
7 you will need to understand to understand that law, to  
8 understand why Chris Cantwell is not guilty.

9 What Chris wanted was for Cheddar Mane to leave me  
10 alone. How do you say leave me alone to someone whose entire  
11 identity is wrapped up in trolling and violence and threats  
12 and harassment? He said what he said to be left alone.

13 Chris Cantwell is not guilty.

14 Thank you.

15 THE COURT: Thank you, counsel.

16 Members of the jury, our first witness, let me  
17 verify this, will be testifying by two-way video.

18 Is that correct?

19 MR. DAVIS: Correct, Judge.

20 THE COURT: All right. I think it's a good time  
21 for us to take our mid morning break now so we can set up the  
22 video testimony and have it ready for you. So we'll take a  
23 short break.

24 I also -- I have another matter related to this  
25 case that I have to attend to, so the break may stretch a

1 little longer than I would otherwise like. I'll try to do it  
2 as quickly as I can. But in some way trials are like a play  
3 where you go to the theater where you see what's on the stage,  
4 but there's a lot of stuff going on behind the scenes that you  
5 don't necessarily see, and I've got to attend to a lot of  
6 different kinds of things to keep this all moving. So bear  
7 with me.

8 We'll take a break. I'll get back to you as soon  
9 as I can. We'll go on and we'll probably go till 12:30 and  
10 try to take a hard break at 12:30 for lunch, okay?

11 Yes, ma'am.

12 THE JUROR: I'll need to see the jury clerk.

13 THE COURT: I'm sorry?

14 THE JUROR: I will need to see the jury clerk.

15 THE COURT: You can speak to the court manager  
16 here. All right. Thank you.

17 (RECESS)

18 (IN COURT - NO JURY PRESENT)

19 THE COURT: I have two issues.

20 A juror after hearing opening statements claims to  
21 have knowledge about the case and Mr. Cantwell. I want to  
22 bring the juror in, ask her some brief questions, excuse her,  
23 ask the parties for their views, and we'll proceed from there.

24 Does anybody have a problem with that?

25 MR. LEVIN: No, your Honor.

1 MR. DAVIS: No.

2 THE COURT: Then I will address the issue of the  
3 member of the public who wants to enter the courthouse without  
4 a mask.

5 So if we could bring the juror in and seat her at  
6 the witness stand.

7 (Juror enters the courtroom)

8 THE COURT: So good morning, ma'am.

9 I want to assure you you've done nothing wrong,  
10 everything is fine, and you did exactly the right thing by  
11 asking to speak to the case manager.

12 Could you briefly just tell us here in court what  
13 you told the case manager?

14 THE JUROR: Okay. Good morning still.

15 So when we were in initial jury selection last  
16 Tuesday morning we had video conferencing audio that read the  
17 defendant's name, and I thought I heard Cantrell. We only  
18 heard it once.

19 After that we went through jury selection and I did  
20 not see the defendant except from finally the back right-hand  
21 side of the court or back left-hand side at a diagonal. I did  
22 not recognize him as Chris Cantwell from the incident in  
23 Charlottesville, Virginia, my home town, and where I was  
24 actually after the event the Emergency Manager for the  
25 University of Virginia that developed the AAR evaluating the

1 events, known associates of those individuals involved in the  
2 murder of Heather Heyer, and subsequently a computer software  
3 program known as Veoci. It is an incident management and  
4 clearance platform.

5 THE COURT: All right. So you have prior knowledge  
6 of Mr. Cantwell and his association with the Charlottesville's  
7 incident?

8 THE JUROR: Correct. And I have concerns that I  
9 would not be truly non-prejudicial towards him that, that I  
10 could not be absolutely fair with that prior knowledge and  
11 exposure, pretty intimate exposure to --

12 THE COURT: Have you discussed your familiarity  
13 with Mr. Cantwell with any member of the jury?

14 THE JUROR: No. I have said nothing, nor to family  
15 members or anyone knowing I was on jury duty.

16 THE COURT: All right. Thank you, ma'am.

17 The clerk will take you to step outside for just a  
18 moment, and then I'll bring you back in in a second, okay?

19 THE JUROR: Okay.

20 (IN COURT - NO JUROR PRESENT)

21 THE COURT: For the person who just called in by  
22 video, you're going to be muted in a second and then we'll  
23 start you when we're ready to go.

24 All right. So this doesn't seem to be a close call  
25 to me. I think we can all agree that the juror should be

1       excused.

2               I'm confident that she has not disclosed any of her  
3       information to any member of the jury. If anyone would like  
4       me to conduct any further examination, I will, or if anyone  
5       wants to object, I'll hear that, but it seems to me obvious.

6               I want to thank her for her service and excuse her.  
7       Does anybody disagree?

8               MR. LEVIN: No, your Honor.

9               MR. DAVIS: No.

10              THE COURT: All right. Thank you.

11              Can we bring the juror back in.

12              (IN COURT - JUROR PRESENT)

13              THE COURT: All right, ma'am. I'm sorry to have  
14       inconvenienced you. You did exactly the right thing.

15              It's a challenge when you want to select a jury  
16       that doesn't know anything about something like  
17       Charlottesville but also making sure that those that do can  
18       associate the person with this case. We didn't succeed  
19       perfectly with you, and that's more on us than it is on you.  
20       You've done exactly what you should do. You disclosed.

21              We do not want to have people on the jury who are  
22       familiar with Mr. Cantwell's past association with  
23       Charlottesville, so I'm going to have to excuse you from  
24       service.

25              Thank you again, and you're done. You're released

1 from your oath and you can do whatever you want with respect  
2 to the trial.

3 Do you have anything in the jury room?

4 THE JUROR: No.

5 THE COURT: You've got everything with you? Good.

6 Sorry. I won't even allow you to go back in and  
7 say anything to anybody.

8 The clerk will help you out, and we'll get going  
9 with the trial.

10 Thank you for your service.

11 THE JUROR: Thank you all and good luck.

12 (IN COURT - NO JUROR PRESENT)

13 THE COURT: All right. Be seated again.

14 So now let me take up the issue of the member of  
15 the public that would like to be admitted to the court without  
16 a mask.

17 I've asked the member of the public who wants  
18 admission without a mask to submit a written request. He's  
19 done so. You have a copy of it. He's someone who's on the  
20 defense list of people to be brought into the courtroom, so  
21 I'll hear from the defendant first.

22 What, if anything, do you want to say to me with  
23 respect to this particular issue?

24 MR. WOLPIN: From our perspective ideally this  
25 person could come in and witness the trial. As the Court

1 noted, he is on Mr. Cantwell's list of three individuals he  
2 asked to be here as a support person in this case.

3 I understand maybe it's somewhat lacking in detail  
4 as to what the medical condition would be that would allow the  
5 Court to make the necessary finding.

6 THE COURT: Yeah, the chief deputy clerk told me  
7 that he refused to provide any additional detail regarding his  
8 medical condition.

9 MR. WOLPIN: Ultimately -- I mean, I guess I'll see  
10 what the government's position is and what the Court says. I  
11 mean, we would like to find a way for him to be admitted but  
12 understand the Court has authority to make certain rules and  
13 requirements.

14 THE COURT: All right. Thank you. I appreciate  
15 that.

16 The government's position? Do you have a view?

17 MR. DAVIS: Judge, I guess we oppose the motion.

18 The court has safety rules that should be followed  
19 and applied, and I think the Court has the right under the  
20 circumstances of the pandemic to enforce those.

21 The only thing I can think of is, if it were  
22 readily doable, to set up a private room where the video feed  
23 that is going to the -- you know, there could be essentially a  
24 different room for overflow viewing that would just have this  
25 petitioner sitting in it. And if he would be willing to wear

1 a mask entering the courtroom, courthouse, going all the way  
2 through the public areas and then be seated there, he could  
3 take off his mask sitting alone in his room. I don't think we  
4 would object to that, but I don't know that that's feasible at  
5 all and it hasn't been raised ahead of time so the motion as  
6 has been made we oppose.

7 THE COURT: All right. So let me just lay a little  
8 groundwork here and explain my ruling.

9 So as the parties know, we're among the first  
10 federal courts in the country to resume holding jury trials  
11 during the pandemic. We've done that after very careful  
12 evaluation of risks and benefits. We're mindful of the -- our  
13 defendants who are charged with crimes have a right to a  
14 speedy trial. The public has a right to have criminal charges  
15 heard against people who have been charged. We want to have  
16 trials as soon as we can hold them safely.

17 Developing a mitigation plan for conducting trials  
18 was central to the work that we've done in preparation for the  
19 trial we're holding here today. I can't tell you how many  
20 hundreds of hours have gone into the preparation of our  
21 mitigation plan. We have consulted with an expert. We have  
22 made physical changes to the courtroom. We have tried to  
23 acquaint ourselves with the most recent information regarding  
24 how COVID-19 is spread. And I have to say that mask wearing  
25 is one of the central aspects of our mitigation plan and we

1 simply cannot lightly deviate from that aspect of the  
2 mitigation plan.

3 Now, Mr. Cantwell has a right to a public trial.  
4 The general public has a constitutional interest in public  
5 trials that have to be respected. I would not do anything  
6 lightly to interfere with the ability of the public to attend  
7 these proceedings. We have made space in this courtroom for  
8 as many members of the public as we can safely accommodate.  
9 We have an overflow courtroom where people who might want to  
10 attend can observe the proceedings through live streaming.

11 We cannot allow someone without a mask into the  
12 courtroom here or the overflow courtroom without endangering  
13 the safety of the people who are required to be here and who  
14 want to be here.

15 And so I recognize that there is an important  
16 constitutional right of access. I also note that this member  
17 of the public claims to be a minister and that mask wearing is  
18 inconsistent with his religious views. And clearly there are  
19 First Amendment rights that people have that need to be  
20 respected even when they come into the courthouse, and I'm  
21 mindful of those rights, but neither the right of public  
22 access to a trial nor any free expression rights a member of  
23 the public may have are absolute.

24 I simply do not believe that under these  
25 circumstances I can accommodate this person's request by

1 allowing him into the courthouse without a mask.

2 I also note that although he was requested to  
3 explain his medical condition so that I could evaluate it and  
4 to the extent to which it supported his claim that he couldn't  
5 wear a mask, he's refused to do that. He also has provided me  
6 with no supporting information regarding his religious views,  
7 so I'm really in no position to evaluate those either. But  
8 even if he provided that information, I have to be very  
9 cautious about granting any exceptions to mask wearing. We  
10 have been open to considering limited exceptions for people  
11 who are actually testifying while they're actually testifying  
12 or lawyers who are questioning while they're questioning,  
13 we've considered those kinds of issues, but we have to  
14 strictly limit that if we allow them at all.

15 So I simply don't believe at the present time  
16 there's any way that I can accommodate his request, and I  
17 don't believe he has sufficiently documented it or justified  
18 it.

19 Now, Mr. Davis, you present an interesting  
20 solution. If he wears a mask to come into the courthouse and  
21 we can arrange a separate room for him to take a stream, I  
22 don't know how feasible that would be. I would have to  
23 evaluate it with my staff. I'm certainly not in a position to  
24 do it now. I'm willing to consult with them about it. And  
25 we'll take the member of the public's name and contact

1 information and if we can feasibly arrange something like that  
2 without compromising public safety, I'm willing to consider  
3 that, but that's something we haven't built into our plan and  
4 I would need to investigate.

5 He can't go into the overflow courtroom because  
6 there are other members of the public that might wind up in  
7 there, and I can't allow him to put them at risk because he  
8 doesn't have the ability or doesn't want to wear a mask.

9 So I'm going to deny the person's request at this  
10 moment. I'm going to ask the chief deputy clerk to take the  
11 contact information for the individual. I will consult with  
12 my staff about whether it is possible to consider the  
13 request -- the suggestion that Mr. Davis has made. And if it  
14 is, we'll contact him and try to set it up, but that too would  
15 require me to very carefully analyze the safety implications  
16 of that kind of practice, because we really require members of  
17 the public who come into our building to be wearing masks at  
18 all times when they're in public spaces and all of our staff  
19 does when they enter into public spaces as well.

20 So I'm willing to consider that, but I can't do it  
21 now and I don't want to delay the trial further.

22 So I would instruct the chief deputy clerk to tell  
23 the witness I've heard his request. I've reviewed it with  
24 counsel and with the defendant present. I've denied the  
25 request. I'm evaluating whether there's any alternative that

1 we can provide him that is consistent with our need to protect  
2 public safety. And if we should decide there is a way to  
3 accommodate him, I will have you notify him. And if not, he  
4 simply has to take the ruling and decide what if any action he  
5 wants to take next, okay?

6 All right. Thank you.

7 Are we ready to bring the jury in? I propose to  
8 say nothing to the jury about the juror who has left.

9 Does anybody want me to say anything?

10 MR. DAVIS: No.

11 MR. WOLPIN: (Nods negatively.)

12 THE COURT: No? Okay. Thank you.

13 (IN COURT - JURY PRESENT)

14 THE COURT: All right. Our first witness is going  
15 to be testifying by video. You should be able to see the  
16 witness testifying and hear the witness testifying.

17 The witness will be under oath and you may consider  
18 the witness's testimony in the same way you would consider any  
19 other evidence presented live from the witness stand here in  
20 court.

21 So this is a sworn witness testifying in the same  
22 way the witness would testify in court and you can consider  
23 that testimony in the same way you would consider the  
24 testimony of any other witness.

25 If you're ready to proceed, the clerk should

1 administer an oath and we will proceed with the direct  
2 examination.

3 SARAH SMITH

4 having been duly sworn, testified as follows:

5 THE CLERK: Would you please state your name and  
6 spell your last name for the record?

7 THE WITNESS: Sarah Smith, S-M-I-T-H.

8 THE CLERK: Thank you. You may be seated.

9 THE COURT: All right. Did I see -- is our IT  
10 person here, Mr. Chiavaras?

11 THE CLERK: He just stepped out.

12 THE COURT: Would you grab him a second?

13 I'm just wondering if there's a way to display the  
14 witness's box on a full screen rather than counsel.

15 All right. You can proceed, Mr. Davis, and we'll  
16 see. It would be preferable if I could get the witness up on  
17 a full screen image rather than a split screen.

18 DIRECT EXAMINATION

19 BY MR. DAVIS:

20 Q. How are you employed?

21 A. I'm the Deputy Director of the Missouri Children's  
22 Division.

23 Q. And are you in the Missouri Department of Social  
24 Services?

25 A. I am.

1 Q. And would you summarize briefly, please, your  
2 experience working for Department of Social Services in  
3 Missouri?

4 A. I've worked with the Department of Social Services  
5 Children's Division since April of 2006. I did investigations  
6 and then also out-of-home investigations, worked at the  
7 hotline, which is our centralized unit for the state of  
8 Missouri. I was also a unit manager of the hotline and have  
9 been a Deputy Director with Children's Division since January  
10 of 2020.

11 THE COURT: Excuse me, ma'am. This is the judge.

12 I can't see well enough to know. Is there a  
13 microphone in front of you or is it a remote mic?

14 Now I'm not hearing you at all. Ma'am, can you  
15 speak again, please?

16 All right. I think what we need to do is take  
17 another break and see if we can set this up so it's working.

18 MR. DAVIS: Are you on mute, Ms. Smith?

19 MR. LEVIN: Your Honor, we just wanted to renew our  
20 oral motion to exclude this witness.

21 THE COURT: The one you made previously?

22 MR. LEVIN: Yes.

23 THE COURT: And the same grounds you identified for  
24 me previously?

25 MR. LEVIN: Yes.

1 THE COURT: Your objection is noted and preserved  
2 for the record.

3 MR. LEVIN: Thank you.

4 THE COURT: All right. I think we need -- the  
5 screen is frozen and we need to take a break. I'll remain in  
6 the courtroom and bring you back in as soon as I can.

7 (IN COURT - NO JURY PRESENT)

8 (IN COURT - JURY PRESENT)

9 THE COURT: Sorry about that, folks. I wanted you  
10 to be able to see the witness better by having her on the full  
11 screen, and then we had a problem with our audio system. We  
12 had to reboot it. I think we're ready to go now.

13 I would ask the witness to please speak loudly.

14 Mr. Davis, go ahead.

15 MR. DAVIS: Shall I start again, your Honor?

16 THE COURT: Please feel free.

17 Q. How are you employed?

18 A. I'm the Deputy Director with Children's Division  
19 within the Missouri Department of Social Services.

20 THE COURT: Hang on a second.

21 MR. LEVIN: I don't believe the witness can see the  
22 attorney. That's the only thing I want to point out on the  
23 screen.

24 THE COURT: All right. Let me ask the witness.

25 What do you see on your screen, ma'am?

1 THE WITNESS: You, your Honor.

2 THE COURT: Me. Okay.

3 Could we switch the view to the counsel?

4 Good. I think we're good to go.

5 Thank you, Mr. Levin.

6 Q. How long have you worked, Ms. Smith, for the  
7 Missouri Department of Social Service?

8 A. Since 2006.

9 Q. Sorry?

10 A. Since 2006.

11 Q. 2006?

12 A. Yes.

13 THE COURT: Just shout out your answers, ma'am,  
14 okay?

15 THE WITNESS: Okay.

16 Q. And when did you become a supervisor?

17 A. I've been with the Children's Division since 2006  
18 as an investigator, then a supervisor in 2008, and then after  
19 that a unit manager, and then I've been Deputy Director of  
20 Children's Division since January 2020.

21 Q. And would you briefly summarize, please, your  
22 duties of Deputy Director of Children's Division?

23 A. Yes. My duties entail everything on the front end  
24 of the child welfare system, so before a child comes into  
25 care. That would include the Child Abuse and Neglect Hotline,

1 investigations, and family-centered services that we offer.

2 Q. Okay. And do your duties include the hotline that  
3 the Missouri department runs for child abuse and neglect?

4 A. That's correct.

5 Q. All right. I have a few questions about the  
6 specific recording in this case.

7 Are you familiar with a recorded telephone call  
8 from Christopher Cantwell to the Missouri Child Abuse and  
9 Neglect Hotline that occurred on June 17th of 2019?

10 A. I am.

11 Q. All right. And do you recall approximately when  
12 you became aware of that call?

13 A. It was the fall of 2019, probably October, when I  
14 was contacted by the FBI.

15 Q. All right. And did you play a role in actually  
16 finding that recording in archives and providing it to the  
17 FBI?

18 A. I did.

19 Q. And did you find it and send it to FBI?

20 A. Yes.

21 Q. And did you listen to the call? Are you familiar  
22 with it?

23 A. I have listened to it since then. I did not listen  
24 to it prior to providing it to the FBI.

25 Q. Okay. Now, just a few questions about how calls

1 are categorized. When someone calls in and makes a report to  
2 the Child Abuse and Neglect Hotline in Missouri, what are the  
3 basic ways the call that be categorized?

4 A. The calls that are received at the Missouri Child  
5 Abuse and Neglect Hotline can be sent out to the field as an  
6 investigation or an assessment or screened out as a documented  
7 call.

8 Q. All right.

9 A. There are also referrals that we would send out  
10 that do not meet the criteria for a --

11 Q. Speak a little more slowly, Ms. Smith. The  
12 criteria at the end, what did you say?

13 A. A referral.

14 Q. Okay.

15 A. It would either be a report or a referral or a  
16 documented call. Those are our three categories.

17 Q. Okay. Now a report did you say can be either an  
18 investigation or an assessment?

19 A. That's correct.

20 Q. And is an investigation or assessment the highest  
21 level of reports that come in to child abuse and neglect?

22 A. An investigation would be the highest report that  
23 would come into the hotline in Missouri.

24 Q. Okay. In investigations -- once a call is treated  
25 as an investigation, what role does law enforcement have?

1           A.     Sure. In Missouri state statute requires law  
2 enforcement to co-investigate all investigations.

3           Q.     Okay. So when you say co-investigate, does that  
4 mean your agency notifies law enforcement and invites them to  
5 participate in the investigation?

6           A.     That's correct.

7           Q.     Okay. And what's the difference between an  
8 investigation and an assessment?

9           A.     An investigation is typically something that would  
10 be criminal in nature, and then an assessment is more  
11 something that the family receives in services.

12          Q.     Okay. So an assessment is about basically finding  
13 services that could help the child in the situation?

14          A.     That's correct.

15          Q.     All right. Now, when you do either an  
16 investigation or an assessment, to what extent is a  
17 walk-through of the home required?

18          A.     Sure. Our policy requires that a walk-through of  
19 the home is done to ensure that it's safe for the child and  
20 children on every report. So that would include an  
21 investigation or an assessment.

22          Q.     All right. And how soon does a walk-through occur  
23 after a report is received?

24          A.     Typically within 72 hours of the report being  
25 received a walk-through is completed. Depending on the

1     allegations, it could be within the first three hours of  
2     receiving a report. It depends on the specific circumstances.

3             Q.     And when a walk-through occurs, what actually  
4     happens?

5             A.     An investigator would go to the home with law  
6     enforcement if there is an investigation or without law  
7     enforcement potentially for an assessment.

8             THE COURT: Excuse me, ma'am. This is the judge  
9     again.

10            We're having a little trouble hearing everything  
11     you say. So I'm going to ask you to speak a little slower  
12     because you tend to go quickly. It's common for people  
13     testifying to move quickly, but I would ask you to try to  
14     speak slower. I would ask you to try to speak as loudly as  
15     you can. Even if it seems a little unnatural for you, to  
16     shout out your answers. And particularly at the end of your  
17     answers you tend to trail off a little bit, and that's when we  
18     have the most difficulty hearing you. All right? So just try  
19     to bear in mind those things.

20            Counsel, could you put the question to the witness  
21     again?

22            Q.     What actually occurs on a walk-through?

23            A.     On a walk-through of the home the Children's  
24     Division usually arrives at the home and ensures that it's a  
25     safe environment for children.

1 Q. And does law enforcement also participate in a  
2 walk-through if law enforcement is co-investigating?

3 A. Yes, they do.

4 Q. All right. And to what extent is the parent  
5 notified that the walk-through is going to occur?

6 A. Children's Division wants to make sure that the  
7 home is safe whenever we arrive, and so we typically do not  
8 give notice that we're coming to the home.

9 Q. All right. So you show up without notice?

10 A. Correct.

11 Q. All right. Now, when the Children's Division does  
12 an investigation or an assessment, to what extent do you  
13 interview children?

14 THE DEFENDANT: We're required to interview  
15 children on each investigation or report and make contact and  
16 ensure that they're safe, and so we do that typically outside  
17 of the home setting if we can in a safe environment.

18 Q. And does that sometimes require interviews of  
19 children in schools?

20 A. Yes, it does.

21 Q. All right. Now, do you sometimes -- as part of  
22 reports to Child Abuse and Neglect Hotline, do you receive  
23 complaints that a parent is a drug user?

24 A. Yes, we do.

25 Q. And how are those reports handled in terms of

1 investigation or assessment?

2 A. When a Children's Service worker at the hotline is  
3 screening the call, they really look at the impact to the  
4 child from parental drug use, look and see how often a parent  
5 may or may not be using, if they're using around the child or  
6 children, and if there are any impacts.

7 Q. Okay. Do you also evaluate the potential impact of  
8 firearms in the home in addition to drugs?

9 A. Yes. On each report or referral that we send out  
10 there's a closing script that asks about potentially dangerous  
11 weapons, drugs, animals around the home since our worker will  
12 be responding to the home.

13 Q. All right. Now, if the Children's Division has a  
14 concern that a child is not safe in the home, can you request  
15 removal of the child?

16 A. Yes.

17 Q. And how does that work? Briefly.

18 A. In Missouri Children's Division cannot take custody  
19 of a child. We would request that from the juvenile office  
20 and they would contact the court. So the juvenile office, law  
21 enforcement, or a physician can take custody in the state of  
22 Missouri.

23 Q. And when a child is removed from the home, what are  
24 the restrictions on the parent, including the right to visit?

25 A. That's a case-by-case basis. A team decides that

1 made up of the juvenile office, the courts, and they would  
2 evaluate the safety factors and then they would set up  
3 visitation for a family depending on what the specific  
4 allegations are.

5 Q. Okay. And as of right now in Missouri,  
6 approximately how many children are in care and have been  
7 removed from their homes?

8 A. In Missouri it's approximately 13,000 children.

9 Q. And all of those have been the subject of court  
10 involved removal?

11 A. Yes.

12 Q. Okay. Is there also something called a Missouri  
13 Central Registry?

14 A. Yes.

15 Q. Can you explain what that is and how that can  
16 become involved with a report to the child and abuse -- Child  
17 Abuse and Neglect Hotline?

18 A. The Missouri Central Registry is something that an  
19 alleged perpetrator's name goes on when an investigation is  
20 substantiated. Central Registry checks are conducted for  
21 those that want to work or volunteer around children. And  
22 once their name goes on and they've exhausted their appeal  
23 process, it remains on indefinitely.

24 Q. And when you say the name remains on the Missouri  
25 Central Registry indefinitely, do you mean for life?

1 A. I do.

2 Q. And is there an appeal process or a way for a  
3 parent to get his or her name removed from the Missouri  
4 Central Registry?

5 A. They can.

6 Q. Can you explain briefly how they can do that?

7 A. Within the first 30 or 60 days of receiving notice  
8 of a report that has been substantiated the alleged  
9 perpetrator can either appeal directly to the circuit court or  
10 select an administrative review through the division.

11 Q. Okay. And can the division also refer complaints  
12 directly to prosecutor's offices for consideration for  
13 criminal prosecution?

14 A. Yes. It's our policy that any substantiated report  
15 is sent over to the prosecuting attorney's office.

16 Q. Okay. So referring back to the call from Mr.  
17 Cantwell to the Child Abuse and Neglect Hotline on June 17th  
18 of 2019, how was that call categorized?

19 A. That call was classified as a documented call.

20 Q. And again, what does that mean?

21 A. It was not referred to field staff for follow up.

22 Q. And why was it not referred to field staff for  
23 follow up, briefly?

24 A. Whenever the person that was screening the call  
25 reviewed the allegations, there was not a known impact to the

1 child or children involved.

2 Q. Do you have to have a known alleged impact to the  
3 child to actually get action from the division?

4 A. Typically that's something that we would look for.

5 Q. Okay. And do you -- as the deputy director, do you  
6 agree with how this particular call was handled? Was it  
7 handled in accordance with your criteria?

8 A. Yes, I agree with the classification.

9 Q. Okay.

10 MR. DAVIS: If I may have just a moment.

11 (Attorney Davis confers with Attorney Krasinski)

12 MR. DAVIS: No further questions.

13 Thank you, Ms. Smith.

14 THE COURT: Thank you.

15 Cross-examination.

16 Again, we just need to take a brief moment to  
17 disinfect the questioning area.

18 Oh, are you going to go from the back?

19 MR. LEVIN: As long as she can see me.

20 THE COURT: All right.

21 Ma'am, can you see the defense lawyer who is  
22 standing in the back?

23 THE WITNESS: I can, your Honor.

24 THE COURT: All right. He can question from the  
25 back then.

## CROSS-EXAMINATION

BY MR. LEVIN:

Q. Good morning, Ms. Smith.

A. Good morning.

Q. So you are familiar with the call that Mr. Davis was questioning you about; is that right?

A. Yes.

Q. And you're familiar with what actions, if any, were taken following the call?

A. Yes.

Q. And you agree that this was recorded as a documented call; is that right?

A. That is correct, sir.

Q. It did not rise to the level of a report?

A. That's correct.

Q. And it wasn't a referral either?

A. Correct.

Q. And that determination was actually made while the caller was on the line; is that right?

A. Yes, sir. The majority of calls that are screened in the Missouri hotline the decision is made while they're on the call.

Q. The person who answers the call spoke to his or her supervisor and indicated to the caller that the call would be documented but that no further action would be taken?

1           A.     That's correct. That's what I heard on that call  
2 as well.

3           Q.     Now, it's quite common obviously for this hotline  
4 to get complaints; is that right?

5           A.     Yes.

6           Q.     That's what the hotline is set up for?

7           A.     Yes.

8           Q.     To get reports of abuse to elders and children?

9           A.     Just children, sir.

10          Q.     Okay. So -- but is the -- the hotline -- when the  
11 person answers the hotline, do they say child abuse hotline or  
12 do they say child/elder abuse hotline?

13          A.     Missouri Child Abuse and Neglect Hotline is  
14 typically how they would answer the phone.

15          Q.     So it's just for children?

16          A.     Yes, sir.

17          Q.     And those calls come in from anonymous people at  
18 times?

19          A.     Yes. If someone is not a mandated reporter, then  
20 they can report anonymously.

21          Q.     So there are anonymous calls that are made?

22          A.     Yes.

23          Q.     There are also calls that are not anonymous that  
24 are made by mandated reporters?

25          A.     Correct.

1           Q.     And those would be teachers and doctors and people  
2     who are mandated by law to report child abuse when they come  
3     across it in their professional lives or even in their  
4     personal lives?

5           A.     That's correct, sir.

6           Q.     And then there are citizens that aren't mandated  
7     reporters who also call the hotline and give their names and  
8     addresses and telephone numbers in connection with their  
9     complaint; is that right?

10          A.     That's correct.

11          Q.     In this case you listened to the call?

12          A.     Yes.

13          Q.     Does the caller identify himself?

14          A.     Mr. Cantwell did identify himself.

15          Q.     Did he give his name?

16          A.     Yes.

17          Q.     And his telephone number and address?

18          A.     I believe so.

19          Q.     And did he give information about children that he  
20     thought might be in danger?

21          A.     He did.

22          Q.     Did he indicate that those children might be  
23     exposed to drugs?

24          A.     He did.

25          Q.     Might be exposed to violent ideology?

1           A.     He did.

2           Q.     And you don't have any information that any of the  
3 information that Mr. Cantwell left on -- or left with the  
4 person who answered the hotline was false or untruthful in any  
5 way?

6           A.     No, sir.

7           Q.     Your agency didn't refer him to law enforcement,  
8 for example, for making false or untrue reports?

9           A.     We did not further that information to law  
10 enforcement.

11          Q.     Now, you indicated that it didn't again rise to the  
12 level of a report. So nothing was done in response to this  
13 call; is that right?

14          A.     Not from the Children's Division. No, sir.

15          Q.     There was no further investigation of the  
16 allegation?

17          A.     Not from Children's Division.

18          Q.     No home visit?

19          A.     No, not from Children's Division.

20          Q.     No phone call?

21          A.     Not from Children's Division, sir.

22          Q.     No referral to any other agency?

23          A.     Not from the division.

24          Q.     Now, you indicate -- you keep saying not from the  
25 division. Are you aware of any other follow up that was done

1 by anyone else with regard to this?

2 A. I think I recall hearing in the recording Mr.  
3 Cantwell had mentioned contacting the FBI with concerns, but  
4 besides that I'm not aware.

5 Q. But the Children's Division didn't do anything to  
6 follow up on that?

7 A. The Children's Division did not follow up on the  
8 allegations.

9 Q. Mr. Cantwell offered more information; is that  
10 right?

11 A. That is correct.

12 Q. And there was no follow up with regard to that?

13 A. The hotline in Missouri does not receive -- the  
14 camera is -- okay.

15 I mean, the Children's Division hotline typically  
16 does not receive evidence. Once the allegations are screened,  
17 that information is then provided to the field. So if we  
18 would have alerted that call to the field, then we would have  
19 encouraged Mr. Cantwell to contact the investigator on the  
20 case to share those files that he referenced.

21 Q. Now, was -- to the best of your knowledge, Mr.  
22 Cantwell didn't insist on an investigation; is that right?

23 A. That's correct.

24 Q. He was cordial with the person who answered the  
25 phone?

1 A. He was.

2 Q. He didn't mention the name Vic Mackey, did he?

3 A. Not that I recall.

4 Q. He didn't mention demanding something of value?

5 A. Not that I recall.

6 MR. LEVIN: Thank you very much.

7 THE COURT: Redirect?

8 MR. DAVIS: Briefly, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. DAVIS:

11 Q. Ms. Smith, I think you said that the call was not  
12 referred to harassment; is that right?

13 A. That's correct.

14 Q. Is there something called -- or something that the  
15 division recognizes as harassment that can be related to a  
16 call to the Child Abuse and Neglect Hotline?

17 A. If the person that is screening the call feels that  
18 the allegations are being made maliciously, we do have a  
19 script that is read that mentions that that person could be  
20 charged with a Class A misdemeanor.

21 Q. So a malicious report in Missouri is actually a  
22 crime; is that right?

23 A. That's correct.

24 Q. All right. But that referral was not made here?

25 A. Correct.

1 MR. DAVIS: All right. Nothing further. Thank  
2 you.

3 THE COURT: Anything else from you?

4 MR. LEVIN: No, your Honor.

5 THE COURT: Thank you.

6 Ma'am, thank you for your help here. You're  
7 excused.

8 We can terminate the video link at this time and  
9 you can call your next witness.

10 THE WITNESS: Thank you, your Honor.

11 MR. DAVIS: Your Honor, at this time the government  
12 moves to admit Exhibit 103 and play Exhibit 103 with Exhibit  
13 103A, which is the transcript. This is the actual call.

14 THE COURT: All right. Subject to your original  
15 objection to the witness's last testimony, do you have any  
16 other objection?

17 MR. LEVIN: No, your Honor.

18 THE COURT: All right. So it will be admitted.  
19 The defendant's previous objection expressed outside of court  
20 is preserved. Otherwise, there's no other objection. It's  
21 admitted and it may be played.

22 MR. DAVIS: Thank you.

23 (Government's Exhibit No. 103 Admitted)

24 (Government's Exhibit No. 103 played)

25 THE COURT: All right. What's your next witness?

1 MR. DAVIS: The next witness is Shayne Tongbua of  
2 FBI and will be a lengthy witness, your Honor.

3 THE COURT: All right. Let's take our lunch break.  
4 Let me ask my case managers. We have lunch. Would  
5 it already have arrived?

6 THE CLERK: Yes.

7 THE COURT: Is it reasonable to think we could do  
8 the jury lunch break in 45 minutes rather than an hour?

9 THE CLERK: I would assume so, your Honor, yes.

10 THE COURT: All right.

11 Can the lawyers get their lunch and be back here in  
12 45 minutes? Okay. Let's try to get going again at 1:15,  
13 okay?

14 We'll take a break until 1:15, members of the jury.

15 (RECESS)  
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## C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 5-4-21

/s/ Susan M. Bateman  
SUSAN M. BATEMAN, RPR, CRR